

Article 5I.

Severance Tax.

§ 105-187.76. Definitions.

The following definitions apply in this Article:

- (1) Casinghead gas. – Gas or vapor indigenous to an oil stratum and produced from the stratum with oil.
- (2) Commission. – The Mining and Energy Commission.
- (3) Condensate. – Liquid hydrocarbon that is or can be recovered from gas by a separator or other means.
- (4) Energy mineral. – All forms of natural gas, oil, and related condensates.
- (5) First purchaser. – A person who purchases an energy mineral from a producer.
- (6) Gas. – All natural gas, including casinghead gas, and all other hydrocarbons not defined as condensates.
- (7) Gross price. – The total price paid by the first purchaser of the energy mineral at the wellhead.
- (8) Marginal gas well. – A well incapable of producing more than 100 MCF per day, as determined by the Commission using the current wellhead deliverability rate methodology utilized by the Commission, during the calendar month for which the severance tax report is filed.
- (9) MCF. – One thousand cubic feet of natural gas.
- (10) Oil. – Crude petroleum oil, and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the reservoir.
- (11) Owner. – An owner of a landowner's royalty interest, of an overriding royalty, of profits and working interests, or any combination thereof in energy minerals. The term does not include an owner of federal, State, or local governmental royalty interest.
- (12) Person. – Defined in G.S. 105-228.90.
- (13) Producer. – A person who takes an energy mineral from the soil or water in this State.
- (14) Return. – Any report or statement required to be filed under this Article to determine the tax due.
- (15) Royalty interest. – An interest in mineral rights in a producing leasehold in the State. A royalty interest does not include the interest of a person having only the management and operation of a well.
- (16) Secretary. – The Secretary of Revenue.
- (17) Severance. – The extraction or other removal of an energy mineral from the soil or water of this State.
- (18) Severed. – The point at which the energy mineral has been separated from the soil or water of this State.
- (19) Standard barrel of oil. – A barrel of oil containing 42 gallons.
- (20) Taxpayer. – Any person required to pay the severance tax levied by this Article. (2014-4, s. 17(a).)

§ 105-187.77. Tax on severance of energy minerals.

(a) Purpose. – An excise tax is levied on the privilege of engaging in the severance of energy minerals from the soil or water of this State. The tax is imposed on the producer of the energy mineral. The purpose of the tax is to provide revenue to administer and enforce the provisions of this Article, to administer the State's natural gas and oil reclamation regulatory program, to meet the environmental and resource management needs of this State, and to reclaim land affected by exploration for, drilling for, and production of natural gas and oil. The severance tax is imposed upon all energy minerals severed when sold.

(b) Calculation of Tax. – The amount of the severance tax is calculated as follows:

(1) Condensates. – The applicable percentage rate of the gross price paid.

(2) Gas. – The applicable percentage rate of the market value as determined in G.S. 105-187.78.

(3) Oil. – The applicable percentage rate of the gross price paid.

(c) **(Effective until January 1, 2019)** Oil and Condensates Rate. – The percentage rate for condensates and oil is two percent (2%).

(c) **(Effective January 1, 2019 until January 1, 2021)** Oil and Condensates Rate. – The percentage rate for condensates and oil is three and one-half percent (3.5%).

(c) **(Effective January 1, 2021)** Oil and Condensates Rate. – The percentage rate for condensates and oil is five percent (5%).

(d) **(Effective until January 1, 2019)** Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to the Mining and Energy Commission for a determination that the well qualifies as a marginal gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate. For severance of gas from a marginal gas well the percentage rate is four-tenths of one percent (0.4%).

(d) **(Effective January 1, 2019 until January 1, 2021)** Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to the Mining and Energy Commission for a determination that the well qualifies as a marginal gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate. For severance of gas from a marginal gas well the percentage rate is six-tenths of one percent (0.6%).

(d) **(Effective January 1, 2021)** Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to the Mining and Energy Commission for a determination that the well qualifies as a marginal gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate. For severance of gas from a marginal gas well the percentage rate is eight-tenths of one percent (0.8%).

(e) **(Effective until January 1, 2019)** Gas Rate. – The percentage rate for gas is nine-tenths of one percent (0.9%).

(e) **(Effective January 1, 2019 until January 1, 2021)** Gas Rate. – The percentage rate for gas is set in the table below. The tax rate is applied to the delivered to market value of the gas sold.

Over	Up to	Rate
-0-	\$3.00 per MCF	0.9%
\$3.01 per MCF	\$4.00	1.9%
\$4.01	N/A	2.9%

(e) **(Effective January 1, 2021 until January 1, 2023)** Gas Rate. – The percentage rate for gas is set in the table below. The tax rate is applied to the delivered to market value of the gas sold.

Over	Up to	Rate
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-0-	\$3.00 per MCF	0.9%
\$3.01 per MCF	\$4.00	1.9%
\$4.01	\$5.00	2.9%
\$5.01	\$6.00	3.9%
\$6.01	\$7.00	4.9%
\$7.01	N/A	5%

(e) **(Effective January 1, 2023)** Gas Rate. – The percentage rate for gas is set in the table below. The tax rate is applied to the delivered to market value of the gas sold.

Over	Up to	Rate
-0-	\$3.00 per MCF	0.9%
\$3.01 per MCF	\$4.00	1.9%
\$4.01	\$5.00	2.9%
\$5.01	\$6.00	3.9%
\$6.01	\$7.00	4.9%
\$7.01	\$8.00	5.9%
\$8.01	\$9.00	6.9%
\$9.01	\$10.00	7.9%
\$10.01	N/A	9%

(2014-4, ss. 17(a), (d)-(f); 2016-5, s. 4.4(b).)

§ 105-187.78. Delivered to Market Value.

(a) **Delivered to Market Value of Natural Gas.** – The delivered to market value of natural gas is the total actual gross price as adjusted in this section. The delivered to market value of gas is determined by subtracting the producer's actual costs to deliver the gas to the market from the producer's total gross cash receipts from the sale of the natural gas. A producer receiving a cost reimbursement from the gas purchaser shall include the reimbursement in the gross cash receipts and is entitled to deduct the actual costs of delivering the gas to market incurred.

(b) **Records.** – In order to be eligible to subtract the actual costs to deliver the gas to the market from the producer's gross receipts for purposes of calculating the delivered-to-market value of natural gas, the producer shall provide any information required by the Secretary. Every producer subtracting the costs to deliver the gas to the market as permitted under this subsection shall maintain and make available for inspection by the Secretary any records the Secretary considers necessary to determine and verify the amount of the costs to deliver the gas to the market the producer is eligible to subtract. The burden of proving eligibility for subtracting the costs to deliver the gas to the market and the amount of the costs to deliver the gas to the market to be subtracted shall rest upon the producer, and no subtraction of costs to deliver the gas to the market shall be allowed to a producer that fails to maintain adequate records or to make them available for inspection.

(c) **Costs to Deliver the Gas to the Market and Facilities Used to Deliver the Gas to the Market.** – A "facility used to deliver the gas to market" includes flow lines or gathering systems from the separator to the purchaser's transmission line, compressor stations, dehydration units, line heaters after the separator, and treating facilities. "Costs to deliver the gas to the market" are the actual and reasonable costs incurred by the producer to get the gas from the mouth of the well to the first purchaser, except costs incurred in normal lease separation of the oil or condensate from the gas, and costs associated with insurance premiums on a facility used to deliver the gas to market. Costs to deliver the gas to the market include only the following:

- (1) Costs for compressing the gas sold.
- (2) Costs for dehydrating the gas sold.
- (3) Costs for sweetening and treating the gas sold.
- (4) Costs for delivering the gas to the purchaser.
- (5) Reasonable charges for depreciation of the facility used to deliver the gas to market being used, provided that, if the facility is rented, the actual rental fee is added.
- (6) Costs of direct or allocated labor associated with the facility used to deliver the gas to market.
- (7) Costs of materials, supplies, maintenance, repairs, and fuel associated with the facility used to deliver the gas to market.
- (8) Property taxes paid on the facility used to deliver the gas to market.
- (9) Charges for fees paid by the producer to any provider of dehydration, treating, compression, and delivery services. (2014-4, s. 17(a).)

§ 105-187.79. On-site use exemption from the tax.

On-site use is exempt from the tax imposed under this Article. On-site use is the severance of energy minerals from land or water in this State owned legally or beneficially by the producer, which energy minerals are used on the land from which they are taken by the producer as part of the improvement of or use in the producer's homestead and which have a yearly cumulative delivered to market value of not greater than one thousand two hundred dollars (\$1,200). When severed energy minerals so used exceed a cumulative delivered to market value of one thousand two hundred dollars (\$1,200) during any year, the further severance of energy minerals shall be subject to the tax imposed by this Article. (2014-4, s. 17(a).)

§ 105-187.80. Returns and payment of tax.

(a) General. – Severance taxes are payable when a return is due. A return is due quarterly or monthly as specified in this section. A return must be filed by the producer of the energy mineral with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

(b) Payment. – A producer of energy minerals shall pay the tax for all owners of the energy minerals. The producer shall withhold from any payment due owners the proportionate tax due for remittance to the Secretary.

(c) Quarterly. – A taxpayer who is consistently liable for less than one thousand dollars (\$1,000) a month in severance taxes must file a return and pay the taxes due on a quarterly basis. A quarterly return covers a calendar quarter and is due by the 25th day of the second month following the end of the quarter.

(d) Monthly. – A taxpayer who is consistently liable for at least one thousand dollars (\$1,000) a month in severance taxes must file a return and pay the taxes due on a monthly basis. A monthly return is due by the 25th day of the second month following the calendar month covered by the return.

(e) Category. – The Secretary must monitor the amount of severance taxes paid by a taxpayer or estimate the amount of taxes to be paid by a new taxpayer and must direct each taxpayer to pay tax and file returns as required by this section. In determining the amount of taxes due from a taxpayer, the Secretary must consider the total amount due from all places of business

owned or operated by the same person as the amount due from that person. A taxpayer must file a return and pay tax in accordance with the Secretary's direction.

(f) Information on Return. – The amount of tax due and any other information required by the Secretary must be included on the return. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed. The return must contain the following information concerning energy minerals produced during the month being reported:

- (1) The gross amount of energy minerals produced that are subject to the tax imposed by this Article.
- (2) The leases from which the energy minerals were produced.
- (3) The names and addresses of the first purchasers of the energy minerals.

(g) Additional Information. – To claim an exemption for on-site use, the producer or taxpayer of a proposed or existing gas well shall apply to the Secretary for determination of eligibility. The Secretary may require an applicant to provide any information required to administer this provision. The Secretary shall make the determination within 15 calendar days of the receipt of all information required by the Secretary from the producer or taxpayer, and the producer or taxpayer shall attach the determination of eligibility to its severance tax form next due, as applicable. The taxpayer shall provide any information required by the Secretary. Every taxpayer claiming the exemption shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the claim to which the taxpayer is entitled. The burden of proving eligibility shall rest upon the taxpayer, and no exemption shall be allowed to a taxpayer who fails to maintain adequate records or to make them available for inspection. The portion of the severance tax that is required to be deducted from the royalty owner or other interest shall be calculated in the same manner as the portion of the severance tax borne by the producer.

(h) Commission Determination. – To claim the marginal gas rate, the producer or taxpayer of a proposed or existing gas well shall provide to the Secretary proof that the Mining and Energy Commission has determined the well qualifies as a marginal gas well. (2014-4, s. 17(a).)

§ 105-187.81. Bond or letter of credit required.

A producer must file with the Secretary a bond or an irrevocable letter of credit after obtaining a permit under G.S. 113-395. A bond or an irrevocable letter of credit must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of the bond or irrevocable letter of credit is two times the applicant's average expected monthly tax liability under this Article, as determined by the Secretary, provided the amount of the bond may not be less than two thousand dollars (\$2,000) and may not be more than two million dollars (\$2,000,000). The Secretary should periodically review the sufficiency of bonds required of producers and increase the amount of a required bond when the amount of the bond furnished no longer covers the anticipated tax liability of the producer and decrease the amount when the Secretary determines that a smaller bond amount will adequately protect the State from loss. When notified to do so by the Secretary, a person who is required to file a bond or an irrevocable letter of credit must file the bond or irrevocable letter of credit in the amount required by the Secretary within 30 days after receiving the notice from the Secretary. (2014-4, s. 17(a); 2016-5, s. 4.4(c).)

§ 105-187.82: Repealed by Session Laws 2016-5, s. 4.4(a), effective May 11, 2016.

§ 105-187.83. Royalty owner's records.

The owner of a royalty interest shall keep and provide to the Secretary, upon request, both of the following:

- (1) A record of all money received as royalty from each producing leasehold in the State.
- (2) A copy of all settlement sheets furnished by a purchaser or operator or other statement showing the amount of energy minerals for which a royalty was received and the amount of severance tax deducted. (2014-4, s. 17(a).)

§ 105-187.84. Permits suspended for failure to report.

If an entity fails to file any report or return or to pay any tax or fee required by this Article for 90 days after it is due, the Secretary shall inform the Secretary of Environmental Quality of this failure. The Secretary of Environmental Quality shall suspend permits for oil and gas exploration using horizontal drilling and hydraulic fracturing under G.S. 113-395 of any entity that fails to file a return under this Article. The Secretary of Environmental Quality shall immediately notify by mail an entity of a suspension under this section. (2014-4, s. 17(a); 2015-241, s. 14.30(v).)

§ 105-187.85. No local taxation.

A city or county may not impose a franchise, privilege, license, income, or excise tax on the severing, production, treating, processing, ownership, sale, storage, purchase, marketing, or transportation on any energy minerals produced in the State, or upon the business of severing, producing, treating, processing, owning, selling, buying, storing, marketing, or transporting such energy minerals, or upon the ownership, operation, or maintenance of plants, facilities, machinery, pipelines, and gathering lines related to the severing, production, treating, processing, ownership, storage, sale, purchase, marketing, or transportation of energy minerals. This section does not preclude the taxation of the property in accordance with Article 11 of this Chapter. (2014-4, s. 17(a).)

§ 105-187.86: Reserved for future codification purposes.

§ 105-187.87: Reserved for future codification purposes.

§ 105-187.88: Reserved for future codification purposes.

§ 105-187.89: Reserved for future codification purposes.

§ 105-187.90: Reserved for future codification purposes.